

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

YAN IOSHPA,	:	
Petitioner-Plaintiff,	:	
	:	
v.	:	No. 06-MC-0067
	:	
ALBERTO R. GONZALES,	:	
United States Attorney General,	:	
	:	
MICHAEL CHERTOFF,	:	
Secretary of Department of	:	
Homeland Security,	:	
	:	
EMILIO GONZALEZ,	:	
Director of U.S. Citizenship and	:	
Immigration Services (CIS),	:	
	:	
DONALD J. MONICA,	:	
District Director of Philadelphia	:	
CIS,	:	
Respondents-Defendants.	:	

MEMORANDUM - ORDER

GREEN, S.J.

August 31, 2006

Presently pending is a Petition for Hearing on Naturalization Application, Defendants' Motion to Dismiss the petition, and Petitioner's Reply thereto. For the reasons set forth below, Plaintiff's petition for a hearing will be denied and Defendants' Motion to Dismiss will be granted, in part and denied, in part.

Petitioner filed an Application for Naturalization on May 27, 2003. The United States Citizenship and Immigration Service ("USCIS") interviewed Petitioner on April 12, 2004. The USCIS has not yet made a determination on Petitioner's application. Petitioner claims that the USCIS failed to adjudicate his application in a proper and timely manner as provided by the Immigration and Nationality Act ("INA"). Petitioner asserts that, pursuant to 8 U.S.C. § 1447(b), this court has jurisdiction to conduct a hearing on his application because more than 120 days have passed since Petitioner was interviewed by the USCIS. Defendants respond by asserting

that this court does not have subject matter jurisdiction over this matter and also by arguing that Petitioner has not stated a claim upon which relief may be granted. Defendants claim that Petitioner's case is not ripe for this court's review because although Petitioner has been interviewed, his examination is not complete. In the alternative, Defendants argue that if this court determines that it has subject matter jurisdiction over Petitioner's claims, the court should nevertheless remand this matter to the USCIS because it has the necessary expertise, access and personnel to make determinations concerning applications for citizenship.

Following the court's reasoning in El-Daour v. Chertoff, 417 F.Supp.2d 679 (W.D.Pa., 2005), I conclude that this court has jurisdiction over this matter because a determination on Petitioner's application for naturalization was not made within 120 days after he was interviewed.¹ However, according to the plain language of the statute this court may either determine the matter or remand it to the USCIS. The completion of background investigations for applicants for citizenship is a critical matter reserved for the Federal Bureau of Investigation and the USCIS. While this court has subject matter jurisdiction to conduct a naturalization hearing, Defendants responded that they scheduled an interview with Plaintiff for August 28, 2006. Accordingly, no purpose is served by this court conducting a hearing on this matter at this time. An appropriate order follows.

¹ The essence of Defendants' argument is that the examination is a process to be completed rather than a single event. However, as Judge Ambrose noted, there is ample support found in the language of 8 U.S.C.A. and the regulations pertaining thereto, require an opposite reading. See El-Daour v. Chertoff, 417 F.Supp.2d at 681-83.

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	:	
DONALD J. MONICA,	:	
District Director of Philadelphia	:	
CIS,	:	
Respondents-Defendants.	:	

ORDER

AND NOW, this day of August 2006, **IT IS HEREBY ORDERED** that

Defendant's Motion to Dismiss Petitioner's Application for Naturalization is **DENIED**, in part and **GRANTED**, in part. Defendant's motion is denied with respect to Defendant's request to dismiss the petition for lack of subject matter jurisdiction. Defendants' motion is **GRANTED** with respect to their request to have this matter remanded to the United States Citizenship and Immigration Service.

IT IS FURTHER ORDERED that this matter is remanded to the United States Citizenship and Immigration Service to determine the matter and to report to this court the status thereof within 120 days of the date of this Order.

BY THE COURT:

s/Clifford Scott Green
Clifford Scott Green, S.J.